

PORT OF LONG BEACH  
DATA SERVICES AGREEMENT

FMC NO. 201217

Expiration: ~~See Section 4~~ June 30, 2021

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**PORT OF LONG BEACH DATA SERVICES AGREEMENT**

This **PORT OF LONG BEACH DATA SERVICES AGREEMENT** (the “Agreement”), is entered into this 10th day of July, 2012, by and among the City of Long Beach, acting by and through its Board of Harbor Commissioners (the “Port”) on the one hand, and PierPass LLC and each of the marine terminal operators (the “MTOs”) listed in Appendix A hereto (hereinafter referred to collectively as “PierPass”), on the other hand.

**WHEREAS**, the MTOs are tenants of the Port who operate marine terminals on Port property (the “Terminals”); and

**WHEREAS**, the Port, as part of its Clean Air Action Plan, has adopted a Clean Trucks Program, which limits access to Terminals at the Port to trucks that comply with the Tariff’s access requirements, and desires to monitor truck movements at the Port to evaluate the success of the program; and

**WHEREAS**, the Port wishes to obtain truck data from PierPass in order to monitor such movements, and PierPass is agreeable to providing such data and the MTOs consent to PierPass providing such data; and

**WHEREAS**, the Port maintains the Port Drayage Truck Registry (“PDTR”), which contains information on whether a truck meets the Port’s criteria under the Clean Truck Program; and

**WHEREAS**, the MTOs rely upon the information in the PDTR to determine whether trucks should be granted access to the Terminals.

**NOW THEREFORE**, the parties, intending to be legally bound, hereby agree as follows:

**SECTION 1. SERVICES TO BE PROVIDED BY PIERPASS.**

1.1 PierPass agrees to provide the following data (the “Data”) to the Port with respect to trucks moving through each of the MTOs’ terminals: Port terminal ID, SCAC Code, RFID number, License Plate State and Number, move date/time, import/export, full/empty, in/out bound, and Container Length. The Data will be provided for the period beginning January 1, 2012. It will be provided periodically to the Port in electronic form, in batch format, at such intervals as the parties may agree. The specific data to be provided, as well as the timing and format, may be modified by the parties from time to time as they may so agree.

1.2 PierPass may, at its discretion, fulfill its obligations under this Agreement directly, through the use of one or more contractor(s), or through a combination thereof.

1.3 PierPass shall provide such Data as exists in the relevant MTOs’ database, and does not warrant to the Port as to the accuracy of any individual Data. The Port acknowledges and agrees that any and all work product, including all Data provided hereunder, and including proprietary or customized software of PierPass or the MTOs, or any of their contractors, and all component parts and codes thereof, is and shall remain exclusively the property of PierPass or the MTOs, as the case may be.

1.4 During the term of this Agreement, PierPass LLC (not the individual MTOs) shall maintain insurance in substance as described in Appendix B hereto.

1.5 The Port shall have the right to use the Data for purposes, including environmental planning, emissions inventory and transportation planning.

## **SECTION 2. COMPENSATION TO PIERPASS**

In exchange for the services provided by PierPass under this Agreement, the Port shall compensate PierPass in the amount of \$1,500 for its startup costs, payable within thirty (30) days after the effective date of this Agreement, and \$4,000 per calendar month for the first 12 months and, as long as both the Port of Long Beach and the Port of Los Angeles are contracting with PierPass to provide data, \$3,500 per calendar month for the subsequent 24 months and \$4,000 per calendar month for the period July 1, 2015 through June 30, ~~2018~~2021, payable within thirty (30) days after the close of each month. The maximum amount payable under this Agreement is \$~~277,500~~421,500.

## **SECTION 3. PORT DRAYAGE TRUCK REGISTRY.**

3.1 Access to Terminals. To the extent that the Port's Tariff contains criteria that trucks and their owners or operators must meet in order to gain access to the Terminals and/or a deadline by which such criteria must be met, the MTOs shall permit access only to trucks that meet the criteria and/or deadlines established by the Port, provided that the relevant information as to whether a truck meets the criteria is provided to the MTOs through the PDTR.

3.2 Maintenance of and Access to Database. The Port, at its expense, shall be responsible for the maintenance of a complete, accurate, and up-to-date PDTR that identifies the status of all trucks regularly serving the Port with respect to the environmental and concession requirements for trucks established by the Port. The Port, at its expense, shall provide MTOs and their contractors with access to such database to the extent necessary to fulfill their obligations under this Agreement, but

the Port shall not be responsible for the MTOs and their contractors' costs related to such access. MTOs shall not be liable for the consequences of any errors or omissions in the content or transmission of the data in the PDTR database maintained by the Port. Upon accurate transmission of the PDTR data to the MTOs, the MTOs shall be responsible for maintaining accurate copies of the data transmitted and stored on their systems.

**SECTION 34. REPRESENTATIONS AND WARRANTIES.**

34.1 PierPass hereby represents and warrants to the Port that:

(a) It is duly organized and validly existing under the laws of the jurisdiction in which it is incorporated and has all requisite power, capacity, and authority to enter into this Agreement and perform its obligations hereunder.

(b) This Agreement has been duly executed and delivered by it or on its behalf and constitutes the legal, valid, and binding obligation of PierPass enforceable against it in accordance with its terms, subject to bankruptcy, insolvency and other similar laws relating to or affecting the enforceability of creditors' rights generally, and to general principles of equity.

(c) The execution, delivery and performance of this Agreement it will not violate any agreements or instruments to which PierPass is a party, and does not require the consent of any third party.

34.2 The Port hereby represents and warrants to PierPass that:

(a) This Agreement has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of the Port, enforceable against the Port in accordance with its terms.

(b) The execution, delivery and performance of this Agreement by the Port will not violate any agreement or instrument to which it is a party, and does not require the consent of any third party.

(c) The Port has complied with all applicable laws, ordinances and regulations applicable to procurement, approval and execution of this Agreement.

(d) The Port is not immune from suit for claims arising under this Agreement providing any claimant complies with the procedures set forth in California Government Code Section 900 and following.

#### **SECTION 45. EFFECTIVE DATE, DURATION AND TERMINATION**

45.1 This Agreement shall become effective on the date it becomes effective pursuant to the Shipping Act of 1984, as amended ("Shipping Act"), and shall remain in effect until June 30, ~~2018~~ 2021.

45.2 Either party may terminate this Agreement on not less than twenty (20) days' written notice.

#### **SECTION 56. RELATIONSHIP BETWEEN PARTIES**

PierPass acts as an independent contractor. Nothing herein is intended to create or shall be interpreted as creating any other relationship between the Port and PierPass. No party to this Agreement has authority to bind any other party with respect to any matters whatsoever.

#### **SECTION 67. CONFIDENTIALITY**

The Port shall keep confidential any and all Data provided to it by PierPass under this Agreement, except (1) with the prior written consent of PierPass, (2) as provided in the California Public Records Act as determined by the Office of the City

Attorney, or (3) to the extent necessary to accomplish the purposes of this Agreement. The Port may disclose Data received by it to any employee, officer, director, attorney, auditor, accountant, contractor, service provider, agent or representative ("Recipient") who has a legitimate need to know the information in question for the purposes of this Agreement. Any Recipient to whom information is disclosed shall be advised of this confidentiality provision and shall secure and protect such information from unauthorized use or disclosure using at least the same degree of care as the Recipient employs to avoid unauthorized use or disclosure of its own confidential information, but in no event less than reasonable care.

#### **SECTION 78. GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any conflict of law principles, and shall be subject to Federal law to the extent applicable. The venue of any dispute between the parties to this Agreement shall be the appropriate federal court having personal and subject matter jurisdiction in Los Angeles, CA (or state court, if the otherwise appropriate federal court lacks jurisdiction) or the appropriate federal agency having jurisdiction over any dispute arising under applicable Federal law.

#### **SECTION 89. MISCELLANEOUS**

89.1 This Agreement may not be amended or modified, nor may any provision hereof be waived, except pursuant to an instrument in writing signed by each of the parties hereto.



89.2 This Agreement, together with the documents contemplated hereby, sets forth the entire understanding between the parties relating to the subject matter hereof.

89.3 No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver and delivered to the other party.

89.4 Except as otherwise provided in this Agreement, no party hereto shall be liable for failure or delay in carrying out its obligations under this Agreement when such failure or delay results from any cause which is beyond the reasonable control of the party including, but not limited to, work stoppages, strikes, accidents, casualties, labor disputes, fire, road, marine or rail disasters, acts of God, governmental restraints, war or hostilities, acts of terrorism, embargoes or other similar conditions beyond the control of the affected party.

89.5 Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent by a recognized reputable private courier company or by United States or other national mail system, return receipt requested, or by e-mail or facsimile transmission followed by such means, to:

If to the Port:

City of Long Beach  
Long Beach Harbor Department  
P.O. Box 570  
Long Beach, California 90801  
Attention: Executive Director  
Fax: (562) 901-1733

with a copy to:

City of Long Beach  
Office of the City Attorney  
City Hall, 8<sup>th</sup> Floor  
333 West Ocean Boulevard  
Long Beach, California 90801  
Attention: Harbor Division  
Fax: (562) 570-2232

If to PierPass:

c/o Mr. ~~Bruce Wargo~~John Cushing, President  
444 W. Ocean Blvd., Suite 700  
~~100 Ocean Gate, Suite 600~~  
Long Beach, CA 90802  
Fax: (562) 437-9960

With a copy to:

David Smith/Wayne Rohde  
Cozen O'Connor  
~~The Army & Navy Club Bulding~~  
1200 19<sup>th</sup> Street, NW  
~~1627 I Street NW, Suite 1100~~  
Washington, D.C. ~~20006~~20036  
Fax: (202) ~~478-5005~~618-4847

89.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**APPENDIX A TO DATA DELIVERY AGREEMENT**

INTERNATIONAL TRANSPORTATION SERVICE, INC.

1281 Pier ~~J~~AvenueG Way

Long Beach, CA 90802-~~6393~~6353

LBCT LLC dba LONG BEACH CONTAINER TERMINAL, ~~INC.~~ LLC

1171 Pier F Avenue

Long Beach, CA 90802

TOTAL TERMINALS INTERNATIONAL, LLC

1999 Harrison St., Suite 550

Oakland, CA 94612-3520

PACIFIC MARITIME SERVICES, L.L.C.

1131 SW Klickitat Way

Seattle, WA 98134

~~SSA TERMINAL (LONG BEACH)~~SSA TERMINALS (PIER A), LLC

1131 SW Klickitat Way

Seattle, WA 98134

SSA TERMINALS, LLC

1131 SW Klickitat Way

Seattle, WA 98134